No. 163

In the Supreme Court of the United States

OCTOBER TERM, 1955

INTERSTATE COMMERCE COMMISSION, APPELLANT

v.

FROZEN FOOD EXPRESS ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

BRIEF OF INTERSTATE COMMERCE COMMISSION, APPELLANT, IN OPPOSITION TO MOTION TO AFFIRM

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Interstate Commerce Commission.

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CASES CITED

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STATEMENT

The Motion to Affirm herein filed on behalf of the United Sates and the Secretary of Agriculture makes no attempt to answer the specific contentions of the appellants in Nos. 162, 163, and 164, that these appeals involve substantial questions and, therefore, that this Court should note jurisdiction. The questions urged as substantial are not even discussed in the Motion. Its authors disregard them or attempt to brush them aside with the statement that the appeals "present only the narrow question whether fresh and frozen dressed poultry constitute nonmanufactured agricultural products which are within the

agricultural exemption of section 203 (b) (6)" of the Interstate Commerce Act.

We submit that much more than that "narrow question" is involved in these appeals. From the standpoint of the Interstate Commerce Commission, as one of the appellants, perhaps the most important and most substantial question is one which relates to the Commission's authority and jurisdiction. That question is whether findings of fact made by the Commission on substantial evidence in a proceeding admittedly within the Commission's statutory jurisdiction may be completely disregarded and overturned by a reviewing court; together with the closely related question whether the Commission's long and consistent interpretation of a statutory provision it is required to administer and enforce is to be given no weight whatsoever by the reviewing court.

Other substantial questions were presented in the Statements as to Jurisdiction filed by the other appellants (motor carriers and motor carrier associations in No. 162, railroads in No. 164), and those questions were similarly ignored, certainly not answered, in the Motion to Affirm.

There is no necessity, and it would be improper, for us to repeat in this brief the argument set forth in the Commission's Statement as to Jurisdiction. There is little we can add to it, except

to reply briefly to the contentions made in the Motion to Affirm.

The legislative history of Section 203 (b) (6) does not support the appellees' position

One of the contentions made in the Motion is that the legislative history supports the district court's conclusion that fresh and frozen dressed poultry is within the agricultural exemption provided in the statute. With that contention the Commission does not agree.

We doubt if an exhaustive review of the legislative history of section 203 (b) (6) will disclose positively and certainly what the Congress had in mind as to where the line should be drawn between commodities within and commodities without the exemption. There were statements by individual Congressmen, to be sure, and they are sufficiently at variance to enable any party on either side of this litigation to pick and choose and thereby find support for his or its position. But the Congress itself, as distinguished from a few of its individual members, did not explain where it intended the line of demarcation to be drawn. It merely enacted the statute in the form and language we now have, and left its administration and enforcement to the Commission.

If any conclusion properly may be drawn from a review of the legislative history, it can go no

farther than that which the Commission stated in the so-called *Determination* case, 52 M. C. C. 511, 516:

> The history of the legislation is not wholly clear as to the intent of Congress, except that *the partial exemption was to aid the farmer.* * * * (Emphasis added.)

Further on this question, the Commission's report in the *Determination* case recites (p. 516 of 52 M. C. C.):

> The meaning of the term "unprocessed agricultural products" was the subject of considerable debate on the floor of the House and was explained in part by several members of the House Committee on Interstate and Foreign Commerce. For instance, one committee member stated that the term embraced "anything that has not been canned or manufactured or processed", and that it would include cream and milk. He further agreed that the term "includes all farm commodities produced upon any farm in the raw state ready for market", and stated that "on the whole, that is the way the Commission will interpret it and undoubtedly, the courts will give the same interpretation to it."

It is submitted, therefore, that if the legislative history of the exemption provision may be said to support either side in this controversy, it supports the view taken by the Commission

that the exemption should be so interpreted as to aid the farmer. The Commission has consistently interpreted the exemption with that purpose in mind, as indicated by its earlier decisions on the subject, some of which are reviewed in the *Determination* case.

Should this Court decline to take jurisdiction in this case, and thereby affirm without clarification or qualification the decision of the district court, hundreds of commercial truckers engaged in hauling both fresh and frozen dressed poultry on the public highways in interstate commerce would be freed from the regulation which the Commission has felt it was its statutory duty to impose upon them. Carriers of other products of agricultural commodities, such as quick-frozen fruits and vegetables, frozen citrus concentrates, canned fruits, and canned vegetables, would doubtless claim similar exemption from regulation. None of those so exempted would be subject to the operating authority requirements (sections 206 and 209 of the Act), the rate requirements (sections 217 and 218), or the requirements for insurance to protect the public (section 215). We earnestly submit that such results would not "benefit the farmer" in any remote sense, and that any such interpretation of the exemption provision is unjustified by such light as is available as to the legislative intent.

The Commission's interpretation of the section is justified and is sound

Congress in enacting section 203 (b) (6) having left its meaning unclear, and having imposed upon the Commission the duty to "administer, execute, and enforce all provisions of this part", 49 U. S. C. 304 (a) (6), the Commission, in order intelligently to perform that duty, proceeded first in the *Determination* case, *supra*, to interpret the language used in the exemption provision. After reviewing the legislative history, and many dictionary and judicial definitions of the words "manufacture" and "manufactured", the Commission (at p. 557 of 52 M. C. C.) interpreted the statutory language, "agricultural commodities (not including manufactured products thereof)", as meaning:

> Products raised or produced on farms by tillage and cultivation of the soil (such as vegetables, fruits, and nuts); forest products; live poultry and bees; and commodities produced by ordinary livestock, live poultry, and bees (such as milk, wool, eggs, and honey),
>
> *but not including* any such products or commodities which, as a result of some treatment, *have been so changed as to possess new forms, qualities, or properties, or result in combinations.* (Emphasis added.)

The Commission's findings were binding on the district court

The Commission then, in the same *Determination* case, and with the just-quoted interpretation as its guide, weighed the evidence and made its findings as to a large number of commodities which had been the subject of testimony during the extended hearings in that case. On that evidence and under that interpretation of the statutory language it found (52 M. C. C. 547) that dressed poultry was not within the exemption provision. In the proceeding out of which the instant suit arose, and on evidence much more complete as to dressed poultry, the Commission again found that the statutory exemption "does not extend to vehicles used in carrying either * * * fresh or frozen dressed poultry" (62 M. C. C. 646, 651).

On this state of the record, the Commission having made its findings upon substantial evidence, in a matter admittedly within its statutory jurisdiction, we submit those findings should not have been completely disregarded, as they were, by the district court "unless all that has been established in administrative law concerning the limitation on judicial review is to be thrown overboard" (*Interstate Commerce Commission* v. *Jersey City*, 322 U. S. 503, 522).

The "findings of the Commission are made by law *prima facie* true. This Court has ascribed

to them the strength due to the judgments of a tribunal appointed by law and informed by experience." *Illinois C. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454.

An order of the Commission "does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity." *Interstate Commerce Commission* v. *Jersey City*, 322 U. S. 503, 512.

This Court has also said of the Commission's decisions on matters peculiarly within its province that "the judgment required is highly expert. Only where the error is patent may we say that the Commission transgressed." *United Sates* v. *Carolina Carriers Corp.*, 315 U. S. 475, 482.

Even if the question whether the exemption does or does not include fresh and frozen dressed poultry be a mixed question of law and fact, as the district court held it to be, p. 25 of Statement as to Jurisdiction in No. 163, the Commission's findings and conclusions were entitled to "special consideration" by the district court: *Levinson* case, *infra*. It appears to us they received no consideration whatever.

Levinson v. *Spector Motor Service*, 330 U. S. 649, involved the question as to where the line should be drawn between the Commission's power under section 204 of the Act to establish maxi-

mum hours of service of certain motor carrier employees, and, on the other hand, the authority of another Government agency under the Fair Labor Standards Act. The Commission had interpreted the Interstate Commerce Act as giving it authority over the subject matter. This Court had the following to say as to the Commission's decisions on such questions of law (pp. 672–673):

> As conclusions of law, these do not have the same claim to finality as do the findings of fact made by the Commission. However, in the light of the Commission's long record of practical experience with this subject and its responsibility for the administration and enforcement of this law, these conclusions are entitled to special consideration. * * *
>
> * * * We recognize the Interstate Commerce Commission as the agency charged with the administration and enforcement of the Motor Carrier Act. * * *. We see no reason to question its considered conclusion * * *.

And at p. 676 the Court said:

> We have set forth the Commission's record of supervision over this field of safety of operation to demonstrate not only the extent to which the Commission serves Congress in safeguarding the public with respect to qualifications, maximum hours of service, safety of operation and equip-

> ment of interstate motor carriers, but to demonstrate *the high degree of its competence in this specialized field which justifies reliance upon its findings, conclusions and recommendations.* (Emphasis added.)

It is submitted, therefore, that the Commission, not the reviewing court, is the tribunal in whose province it is to "draw the lines" in a case such as this; and that the lines as it drew them, between "agricultural commodities in their natural state" and "those which, as the result of treating or processing, have acquired new forms, qualities, properties, or combinations", were "drawn on rational considerations." *10 East 40th St.* v. *Callus,* 325 U. S. 578, 584.

The Commission having thus drawn the line between commodities within and those without the statutory exemption, and having on substantial evidence in the whole record found that neither fresh nor frozen dressed poultry was exempt, we submit that the district court's complete disregard for those findings and for the Commission's conclusion presents a very substantial question and one of public importance for consideration by this Court.

The Kroblin decision affords no basis for deciding this case

The remaining proposition urged in the Motion to Affirm is that the *Kroblin* case, 113 F. Supp. 599, is dispositive of the question whether dressed

poultry is within the exemption of section 203 (b) (6) and that further review by this Court is unnecessary. But, as we pointed out in the Commission's Statement as to Jurisdiction, the *Kroblin* case did not involve *frozen* dressed poultry; furthermore, in that case the district court was the fact-finder, whereas in the instant (*Frozen Food*) case the facts were found by the Commission and, we submit, the district court was bound by the findings thus made. Hence the *Kroblin* decision affords no basis for this Court to grant the Motion to Affirm.

CONCLUSION

It is earnestly submitted, therefore, that this appeal presents substantial questions for review by this Court, questions which are of public importance; and that the Motion to Affirm should be denied and this Court should take jurisdiction and hear oral argument.

Respectfully submitted.

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